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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 276

COLUMBUS AND CHICAGO MOTOR FREIGHT, INC.,
Appellant,

vs.

PUBLIC SERVICE COMMISSION OF THE STATE OF INDIANA ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF INDIANA.

STATEMENT OF APPELLEES DISCLOSING MATTERS AND GROUNDS MAKING AGAINST THE JURISDICTION OF THE UNITED STATES SUPREME COURT.

OMER STOKES JACKSON,
Attorney General of Indiana;
URBAN C. STOVER,
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Attorneys for Appellees,
State House, Indianapolis, Indiana.

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The appellees submit the following pursuant to Rule 12, Paragraph 3, of the United States Supreme Court, disclosing matters and grounds making against the jurisdiction of the Supreme Court of the United States.

1.

In order to bring this particular appeal within the reviewing jurisdiction of the Supreme Court of the United

States, the record must show that the unconstitutionality of a State statute was a substantial question in the District Court from which the appeal is taken.

Title 28, Sec. 380, U. S. C. A.

2.

The Indiana Motor Vehicle Law, which was the governing statute in the District Court, was not asserted to be unconstitutional. The question involved there was its interpretation by the Indiana Public Service Commission. The Commission maintained, that in its regulating power over vehicles operated for hire over public highways, it could condition the operation of such vehicles, and designate the routes over which they could or could not operate both intrastate and interstate carriers as highway conditions justified.

Appellant's Jurisdictional Statement Under the Heading "Statutes of Indiana, the Validity of which Are Involved."

3.

The Indiana statutes require motor vehicle carriers operated for hire to obtain authority from the Indiana Public Service Commission before operating over any State highway. Appellant in 1934 and again in 1935 applied under this statute to the Indiana Commission for a certificate to conduct a trucking operation over certain highways across the north end of the State. The vice-president of appellant then said that the freight it proposed to handle was being carried by another carrier and that the applicant (appellant) was not then operating in Indiana. Later, before the Interstate Commission, appellant claimed to have been operating in Indiana all the time, and therefore as a *bona fide* operator, had acquired "Grandfather rights" over the particular routes asked for.

The District court found that the appellant was not a *bona fide* operator in Indiana when he applied to the Interstate Commerce Commission.

(See Court's Finding No. 20.)

The Commission, on appellant's application, refused to grant certificates as asked for. The refusal was not based on any fact with respect to the transportation of interstate commerce. The Commission's orders refusing permits to operate over the particular routes were in the exercise of its authority over State highways and had to do with the safety of travel and the preservation of the roadways.

(See Order of Indiana Commission.)

The Indiana Motor Carrier statute provides for a court review of decisions of the Commission (Sec. 39 Indiana Motor Vehicle Law, copy with amended complaint). The appellant did not avail itself of that statutory remedy but allowed the Commission's orders to before final and, then, later, when the State undertook to prosecute for operating over certain routes without a certificate, this suit was brought in the Federal District court. The jurisdiction of a District court in this case was originally based on diversity of citizenship and that the amount in controversy exceeded Three Thousand Dollars ($3,000.00). The theory of the plaintiff (appellant) in the District court was that it was engaged in transporting freight in interstate commerce and for that reason it had a legal right to operate over any public highway in Indiana regardless of the State authorities.

The case in the District court, as originally filed, was not one for a three-judge court. The specially constituted court was assembled after the plaintiff filed its amended complaint and pressed for an interlocutory injunction to enjoin the State enforcement officers from prosecuting the drivers of

appellant's trucks. In the amended complaint, the contention of the appellant was that since the enactment of the Federal Motor Carrier Act of 1935, it (the appellant) was entitled to operate over any public highway in Indiana as a "bona fide" operator under the "Grandfather Clause" of the Federal Act (Section 206), and that having such a right, it was immune from State regulation.

The hearing at which evidence was introduced on March 11, 1938, was on the appellant's application for an interlocutory injunction. At that time the appellees' motion to dismiss the amended complaint was argued. The result was that on June 29, 1938, the three-judge court made a special finding of facts and a final decree dismissing the amended complaint.

Later, on September 27, 1939, the plaintiff filed a motion for a new trial asserting that newly discovered evidence justified a rehearing of the case. The motion for a new trial was overruled on February 21, 1940.

The appellees maintain:

First. That this suit before the District court was simply an action in which appellant undertook to have the Federal court review and set aside the order of the Indiana Commission on the ground that it was arbitrary, and unreasonable. It appears to us that if this Court has jurisdiction of this appeal, it has jurisdiction to review the discretionary order of any State administrative body, which, within the range of its discretion, grants or withholds authority for the use of State highways by motor vehicles operated for hire. We think the special finding of the court shows this.

Second. If this appeal is from the judgment of the court dismissing the suit on June 29, 1938, the motion for a new trial which went to the point of evidence in support of an interlocutory injunction, ought not be allowed to extend the time for taking the appeal beyond the three months limit.

Inasmuch as the amended complaint was dismissed, there was no logical reason in hearing additional evidence on a complaint which was found to be bad.

Third. If the appeal is from the ruling of the court denying the interlocutory injunction (see Court's Conclusion of Law No. 2), the question now is whether the showing made raised such a serious question that the enforcement of the State statute pending final hearing would inflict irreparable damage; and the presumption is with the decision of the specially-constituted court. There is no showing whatever that the court abused its discretion.

Fourth. In any theory of this appeal which has to do with the authority of the State regulating agency over its highways, this Court has under a much weaker showing, invariably sustained the authority of the State Commissions over the operation of interstate motor carriers.

Sproles v. *Binford*, 286 U. S. 374;
Bradley v. *Public Util. Comm. of Ohio*, 289 U. S. 92;
South Carolina v. *Barnwell Bros.*, 303 U. S. 177;
McDonald v. *Thompson*, 59 S. Ct. 176;
H. P. Welch Co. v. *New Hampshire*, 306 U. S. 79;
Eichholz v. *Public Serv. Comm. of Mo. et al.*, 59 S. Ct. 532;
Maurer et al. v. *Hamilton, Jr., et al.*, 60 S. Ct. 726.

This is especially true where the Federal agency has not "occupied the field" by granting to a motor vehicle carrier a certificate or permit to carry on in interstate commerce.

Eichholz v. *Public Serv. Comm. of Mo. et al.*, 59 S. Ct. 532, and cases there cited p. 5.

Fifth. It is not improper to say to this Court that the question of the right of appellant to engage in the business of interstate commerce is now pending before the Interstate

Commerce Commission on its docket #M. C. 1470. The Indiana Commission, an appellee here, is a party in that proceeding.

(See Special Finding of Fact #19.)

For the foregoing reasons, the appellees submit that the appellant has failed to show that the Supreme Court of the United States has jurisdiction of this appeal, and appellees therefore move to dismiss this appeal.

OMER STOKES JACKSON,
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